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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,871	08/09/2000	Patrice Debregeas	065691/0196	3200

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EXAMINER

TRAN, SUSAN T

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 05/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/582,871

Applicant(s)

Debregeas et al.

Examiner

Susan Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 15, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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DETAILED ACTION

Receipt is acknowledged of applicant's Request for Continued Examination filed 04/15/02, Request for Extension of Time filed 04/15/02, and Amendment C filed 04/15/02.

Claim Objections

1. Claim 1 is objected to because of the typographical error:

The word "feeing" in line two should read "feeding". Appropriate correction is required.

Claim Rejections - 35 U.S.C. § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 24 and 25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's Remarks dated 04/15/02, page 3 discloses specific example for support of the amendment is at page 3, lines 11-23 of the specification. Page 3, lines 11-23 discloses "[t]he sections are very easy to clean, in particular from the outside of the drum, thus reducing the risks of cross-contamination when fixing two different products in succession. Moreover, since the sections cause little clogging, fixing or coating can be carried

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out at a high rate of flow of coating or fixing fluid. Hence, when the products to be fixed or coated are sensitive to heat or humidity, the risks of degradation of the products are avoided. The device is particularly suitable for fixing or coating microgranules for medical applications comprising an active ingredient which should be release steadily and over a prolonged period into the organism". It appears that applicant's specification does not provide support for newly submitted limitations "mutually parallel sections which define between them the apertures and a surface of the drum supporting the granules" and "mutually parallel sections which define between them the apertures and which are arranged to be in contact with the granules". Further clarification is suggested.

3. Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant's claims 1 and 23 recite "the drum comprises mutually parallel sections which define between them the apertures allowing gas to pass through granules", or "the apertures and which form a path between the inside and outside of a cylindrical portion of the drum for flowing gas", while it appears that the air supplied is by the conduit 36, which passes through the apertures between the sections 22 in order to pass from the outside towards the inside of the drum (specification at page 8, lines 22-29). It is suggested to amend the claim to include the conduit 36.

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Claim Rejections - 35 U.S.C. § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17, and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fusejima et al. EP 648529A1.

Fusejima teaches a pharmaceutical granular material coating apparatus comprising rotary drum having cylindrical body portion (2) is formed by partition plates (52) and peripheral surfaces of the frame members (51a and 51b), and nozzle (22) for spraying coating (columns 6 and 12; Figs. 1-3). The coating apparatus further comprising a gas supply duct (31), (column 7, lines 8 through column 8, lines 30). The device is used to produce tablets or granules for pharmaceuticals and food products (column 1, lines 1-5).

Fusejima is silent as to the teaching of the parallel sections (22) of the claimed invention. However, Fusejima does teach and suggest the use of partition plates (52) having peripheral surfaces of the frame members (51a and 51b). Thus, it would have been prima facie obvious for one of the ordinary skill in this art to, by routine experimentation modifying Fusejima's peripheral surfaces of the frame members (51a and 51b) to obtain the claimed invention, because

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the reference teaches the advantageous results of gas supply passes through the inner and outer peripheral surfaces to improve the accumulation of coating material onto the granules.

5. Claims 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fusejima et al. (529), in view of Fusejima et al. US 5,939,097 (097).

Fusejima (529) is relied upon for the reasons stated above. The reference is silent as to the teaching of the packaging of the granule.

Fusejima (097) teaches a food-like medicine composition comprising granule or particulate that can be incorporated into a gelatin capsule (columns 2-3). Thus, it would have been prima facie obvious for one of the ordinary skill in the art to incorporate Fusejima (529)'s granule into the gelatine capsule in view of the teaching of Fusejima (097). The reason for this modification is to obtain a satisfactory product useful in pharmaceutical art.

Response to Arguments

6. Applicant's arguments filed 04/15/02 have been fully considered but they are not persuasive. The examiner maintains the original 103(a) rejections.

Applicant argues that Fusejima I fails to teach or suggest that either frame members **(51a)** and **(52a)** or a plurality of partition plates **(52)**, both of which are provided at the outside of the cylindrical portion **(2)**, can participate in communication between the inside and outside of the cylindrical portion to provide a path for allowing gas to pass through granules. Therefore,

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Fusejima I evidences no motivation for one of ordinary skill in the art to modify frame members or partition plates to provide a path for flowing gas between inside and outside of the cylindrical portion. Contrary to the applicant's argument, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, Fusejima I teaches partition walls for defining a flow path of the flow of the gas from the gas supply duct to the exhaust duct through an accumulated layer of the granular material in the rotary drum (column 4, lines 1-14). Thus, the skilled artisan would have been motivated to modify partition plates to provide a path for flowing gas between inside and outside of the cylindrical portion.

Applicant points out the differences between the coating devices of Fusejima I and the instant application, however, applicant fails to provide any unusual and/or unexpected results over the applied prior arts. Applicant's attention is called to column 15, lines 7-37, wherein Fusejima I recognizes the properties desired by the applicant, e.g., granular material coating apparatus having drying efficiency, flow of gas can be easily changed, easy installation, free from contamination, easy cleaning, therefore, high quality coating can be achieved, thus obtain a satisfactory coating apparatus for tablets, granules and the like useful for pharmaceuticals and food products.

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Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-359.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

THURMAN K. PAGE
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